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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/913,374	12/11/2001	Thomas Brinz	10191/1977	9532

26646 7590 11/17/2003

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NEW YORK, NY 10004

EXAMINER

SIEFKE, SAMUEL P

ART UNIT PAPER NUMBER

1743

DATE MAILED: 11/17/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/913,374

Applicant(s)

BRINZ ET AL.

Examiner

Samuel P Siefke

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 11 September 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 13-25 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 13-25 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.  
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

**DETAILED ACTION**

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims **13-23** are rejected under 35 U.S.C. 102(b) as being anticipated by Japanese Patent Application 50036361.

'361 discloses an apparatus for cleaning air in the passenger area of an automobile that comprises a filter for acid gas removal, a layer of activated carbon, a heat exchanger, an a honeycomb catalyst for CO removal. The layer of carbon is impregnated with potassium permanganate and dried. The layer was then packed into a container and a gas containing 50 ppm of sulfur dioxide was passed through the filter. The filter completely removed the sulfur dioxide from the gas. The filter comprises a honeycomb or tubular style having inside walls; a block having a plurality of axially parallels round cylindrical tubes aligned side by side in a radial alignment relative to one of a straight line and a point as seen in figure 2 (a-f), wherein the walls are provided with the potassium permanganate. For removing carbon monoxide the honeycomb is coated with aluminum oxide.

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***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims **24** and **25** are rejected under 35 U.S.C. 103(a) as being unpatentable over Japanese Patent Application 06186198 in view of Japanese Patent Application 50036361.

'361 discloses an apparatus for cleaning air in the passenger area of an automobile, discussed above.

'361 does not teach that this filter be used as a protective layer for separating a carbon dioxide sensor from a room to be monitored for carbon dioxide.

'198 teaches the use of protective layers that protect carbon dioxide sensors from the influence of harmful gases that prolong sensor response time. This protective layer comprises a filter element made of zeolite (protective layer). Therefore it would have been obvious to one having an ordinary skill in the art to modify '361 for use as a

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protective layer for a carbon dioxide sensor in order to restrain the influence of harmful gas (sulfur dioxide) to prevent the drop of accuracy and responsiveness of a sensor. Carbon dioxide sensors are also used for smoke detectors, clearly the modified sensor of '198 is capable of sensing carbon dioxide in any environment, such as smoke.

### ***Response to Arguments***

Applicant's arguments filed 9/11/03 have been fully considered but they are not persuasive. Applicant argues "It should be noted that the filter disclosed in Kanebo is merely a conventional type of activated carbon filter, which, as stated by the Applicants' specification, is "designed as compressed powder pellets or granules," packed into a container." A recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In a claim drawn to a process of making, the intended use must result in a manipulative difference as compared to the prior art. See *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963). The prior art has all the limitations of the amended claims: a hollow area disposed in the carrier (the hollow area can be any of the area within the honeycomb shaped filter or any of the figures a-f), bounded by an inner surface that can be exposed to a gas and is provided with a coating of an oxidizing agent (this is merely the layer of activated carbon impregnated with potassium permanganate for oxidizing SO<sub>2</sub>).

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Applicant argues no where in Kanebo is there described or figured "axially parallel cylindrical tubes aligned side by side." In figure C of the prior art, there are disclosed axially parallel cylindrical tubes aligned side by side.

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Samuel P Siefke whose telephone number is 703-306-0093. The examiner can normally be reached on M-F 7:00am-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jill A. Warden can be reached on 703-308-4037. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9311.

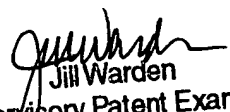
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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

SPS

A stylized, handwritten signature consisting of several overlapping loops and curves.

November 14, 2003

A handwritten signature in cursive script, appearing to read "Jill Warden".

Jill Warden  
Supervisory Patent Examiner  
Technology Center 1700